

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #7	CCRB Case #: 201805247	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/29/2018 4:57 PM	Location of Incident: East 177th Street and East Tremont	Precinct: 48	18 Mo. SOL 12/29/2019	EO SOL 12/29/2019	
Date/Time CV Reported Fri, 06/29/2018 10:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 06/29/2018 10:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nicolas Mahuad	02214	960850	048 PCT
2. POM Andrew Cummings	2646	956559	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Cummings	Abuse: Police Officer Andrew Cummings threatened § 87(2)(b) with the use of force.	
B.POM Nicolas Mahuad	Abuse: Police Officer Nicolas Mahuad searched § 87(2)(b)	
C.POM Andrew Cummings	Abuse: Police Officer Andrew Cummings searched § 87(2)(b)	
D.POM Andrew Cummings	Abuse: Police Officer Andrew Cummings threatened to seize § 87(2)(b)'s property.	

Case Summary

On June 29, 2018, § 87(2)(b) filed this complaint with the CCRB via the on-line website.

On June 29, 2018, at approximately 4:47 p.m., in the vicinity of East 177th Street and East Tremont Avenue in the Bronx, Police Officers Andrew Cummings and Nicholas Mahuad of the 48th Precinct stopped a vehicle in which § 87(2)(b) and an unidentified woman were occupants. PO Cummings pointed his Taser at § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Mahuad and PO Cummings searched § 87(2)(b) (**Allegations B and C: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) received a summons for making an improper left turn (BR01).

PO Mahuad and PO Cummings recorded this incident on their Body Worn Cameras (BWC). The original and subclip files could not be attached to this report, but could be found in IAs# 19 and 21 (BR02-BR03).

Findings and Recommendations

Allegation (A) Abuse of Authority Police Officer Andrew Cummings threatened § 87(2)(b) with the use of force.

§ 87(2)(b) (BR04) said that he picked up a female passenger in the vicinity of Devoe and East Tremont Avenue, and was heading towards East 177th Street in the Bronx, when he was pulled over by PO Cummings and PO Mahuad via sirens and lights. PO Mahuad and PO Cummings approached the vehicle's driver's and front passenger's sides, respectively. PO Mahuad said § 87(2)(b) made an improper left turn and ordered him to produce his New York State (NYS) driver's license. § 87(2)(b) removed his New York City (NYC) Taxi and Limousine Commission (TLC) license from his wallet, and gave it to PO Mahuad. PO Mahuad took the TLC license, said he needed § 87(2)(b)'s driver's license and ordered him to produce it approximately four more times. § 87(2)(b) said he was working as an Uber driver and that he was only required to provide his TLC license. PO Mahuad again ordered § 87(2)(b) to produce his driver's license, but § 87(2)(b) refused and said that the information on his driver's license was the same on his TLC license. The TLC license § 87(2)(b) provided to PO Mahuad only contained § 87(2)(b)'s name and his TLC license number. § 87(2)(b)'s date of birth is not listed on the TLC license, and his picture is not visible on the license (BR13).

§ 87(2)(b) turned towards his passenger's side and saw PO Cummings by the rear passenger's door with a Taser in his hand that was pointed at § 87(2)(b). The female passenger had exited the vehicle and left. § 87(2)(b) did not know when the female passenger exited the vehicle, nor did he know when or why PO Cummings had the Taser pointed at him. § 87(2)(b) did not make any movements in his vehicle, was generally calm, and denied making any threatening statements to the officers prior to noticing that PO Cummings had a Taser pointed at him. PO Mahuad opened the driver's door, grabbed § 87(2)(b)'s arm, and ordered him to exit. § 87(2)(b) complied, at which point PO Cummings lowered his Taser.

PO Cummings (BR05) corroborated § 87(2)(b)'s account, but with the following exceptions. He said § 87(2)(b) had his face turned towards PO Mahuad when he approached the vehicle's front passenger's side, and that the front passenger window was closed, thus he could not hear the conversation between § 87(2)(b) and PO Mahuad. At some point, PO

Cummings heard PO Mahuad ordering § 87(2)(b) at least once, to exit his vehicle. PO Cummings did not know why § 87(2)(b) was ordered out of his vehicle. PO Cummings opened the rear passenger's door and ordered the female out of the vehicle. The female complied. PO Cummings then drew and pointed his Taser at § 87(2)(b) and said to him, "Get out of the car. Put the keys on the dash." PO Cummings did not recall seeing § 87(2)(b) make any movements inside the car, but said he pointed his Taser at § 87(2)(b) because he could not see § 87(2)(b) hands, except his elbow and shoulder, and that his inability to see § 87(2)(b) s hands, coupled with the fact that he did not know why § 87(2)(b) was ordered out of his vehicle, made him fear for his and PO Mahuad's safety. PO Cummings lowered his Taser when § 87(2)(b) exited the vehicle.

PO Mahuad (BR06) said he did not know why PO Cummings pointed his Taser at § 87(2)(b). He also said that § 87(2)(b) was generally uncooperative and argumentative, but PO Mahuad did not recall seeing § 87(2)(b) make any movements inside his vehicle nor did he recall if § 87(2)(b) s hands were visible.

PO Mahuad's BWC (BR02) shows PO Mahuad ordering § 87(2)(b) multiple times to produce his driver's license. At 16:43:54, § 87(2)(b) removes his wallet from his left side pocket, opens it, and hands PO Mahuad his TLC license. PO Mahuad takes the TLC license and again orders § 87(2)(b) to produce his driver's license approximately five more times. At 16:45:10, § 87(2)(b) shows PO Mahuad his driver's license, which is in a clear patch in his wallet, but fails to hand it over to PO Mahuad. He says he does not want to get violation points on his personal driver's license when he is conducting commercial business. PO Mahuad orders § 87(2)(b) approximately six more times to take his license out of the wallet and hand it over. § 87(2)(b) refuses and requests to speak to a supervisor. § 87(2)(b) vehicle's engine is off, his hands are close to his steering wheel, and he has his wallet in his hand. At 16:45:56, PO Mahuad opens the driver's door and orders § 87(2)(b) to exit the vehicle. § 87(2)(b) turns to his passenger's side and notices PO Cummings pointing his Taser at him. § 87(2)(b) laughs and exits his vehicle.

PO Cummings' BWC (BR03) shows PO Cummings standing by § 87(2)(b) s front passenger's side while PO Mahuad and § 87(2)(b) speak, but their voices are faint. At 16:45:49, PO Mahuad orders § 87(2)(b) to step out of his vehicle. PO Cummings opens the rear passenger's door and motions to the female passenger to exit. She complies. At 16:46:00, PO Cummings points his Taser at § 87(2)(b) while he is still facing and speaking to PO Mahuad. At 16:46:05, PO Cummings orders § 87(2)(b) to exit his vehicle. § 87(2)(b) hands are visible and he does not make any movements inside the vehicle.

A conducted electrical weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present. Active resistance includes physically evasive movements to defeat a member of the services' attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into custody. Active aggression consists of a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. NYPD Patrol Guide, Procedure 221-08 (BR07).

The BWC footage, which is corroborated by PO Cummings' own account, establishes that § 87(2)(b) was facing and speaking to PO Mahuad at the time PO Cummings pointed his Taser, and that PO Cummings did not hear the conversation between PO Mahuad and § 87(2)(b) except the single command that § 87(2)(b) exit his vehicle. § 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Andrew Cummings searched § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Nicholas Mahuad searched § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Andrew Cummings threatened to seize § 87(2)(b) s property.

§ 87(2)(b) said that he exited his vehicle holding his wallet and his vehicle's documents in his hand. PO Mahuad escorted him to the rear of his vehicle and said he was under arrest. PO Cummings approached the rear of the vehicle, pushed § 87(2)(b) forward so that he leaned against the hood of the patrol car, which was parked behind § 87(2)(b) s vehicle. PO Cummings kicked § 87(2)(b) legs apart so that they were slightly opened, and then handcuffed § 87(2)(b) (A force allegation was not pled because the force described did not rise to the level of misconduct and § 87(2)(b) did not sustain any injuries). PO Cummings reached inside of § 87(2)(b) s side pockets, while PO Mahuad took § 87(2)(b) s wallet and vehicle documents from his hand. PO Mahuad opened the wallet, removed § 87(2)(b) s driver's license, and then entered the driver's seat of the patrol car.

PO Cummings remained outside with § 87(2)(b) and said § 87(2)(b) was placed in handcuffs for failing to comply with lawful orders and for failing to identify himself. § 87(2)(b) requested to speak to a supervisor, but PO Cummings said a supervisor was not necessary and that if § 87(2)(b) truly wanted to speak to a supervisor then the officers could tow his vehicle and transport him to the 48th Precinct stationhouse so he could speak to a supervisor. § 87(2)(b) told PO Cummings to stop with the intimidation and that he no longer wanted to speak to a supervisor. PO Mahuad exited the patrol car approximately 30 minutes later, and PO Cummings removed § 87(2)(b) s handcuffs. PO Mahuad returned § 87(2)(b) s wallet and vehicle documents, and handed him a summons for making an improper left turn. § 87(2)(b) reentered his vehicle and left.

PO Mahuad and PO Cummings both said that they intended to transport § 87(2)(b) to the 48th Precinct stationhouse and verify his identity, given that he had refused to comply with their multiple requests to produce his driver's license. They thus handcuffed § 87(2)(b) and said he was under arrest for obstruction of governmental administration, failure to comply with lawful orders, and failure to provide identification. PO Mahuad moved his hands around the outer

layer of § 87(2)(b)'s clothing, while PO Cummings reached inside of his pockets. PO Cummings removed a wallet from § 87(2)(b)'s back pocket and gave it to PO Mahuad, who opened the wallet and removed § 87(2)(b)'s driver's license. PO Mahuad run § 87(2)(b)'s information on the patrol car's computer system, and it yielded negative results for any active warrants or ICARDS. PO Mahuad thus decided to issue § 87(2)(b) a summons on the scene rather than arrest him and transport him to the stationhouse. PO Cummings denied making any threats to seize § 87(2)(b)'s vehicle, but said he told § 87(2)(b) that a supervisor was not needed on scene, but if § 87(2)(b) wanted to speak to one then he would be transported to the stationhouse and his vehicle towed as the officers could not leave his vehicle at the scene.

PO Mahuad's BWC shows him and PO Cummings explaining to § 87(2)(b) why his TLC license is not enough to identify him. At 16:46:37, PO Mahuad informs § 87(2)(b) that he needs § 87(2)(b)'s, "client ID and proof of picture," and that § 87(2)(b)'s TLC license does not contain that information. § 87(2)(b) who is holding his wallet and vehicle registration in his left hand, refuses to provide his driver's license and requests to speak to a supervisor. At 16:48:00, PO Mahuad says to § 87(2)(b) "Sir is there any reason why you do not want to provide your driver's license. Are you on parole, probation, or have a warrant out for your arrest? Do you have a suspended license?" § 87(2)(b) insists that the officers could identify him based off his TLC license and refuses to give the officers his driver's license.

At 16:48:37, PO Mahuad and PO Cummings place § 87(2)(b) in handcuffs. PO Cummings then takes § 87(2)(b)'s wallet and vehicle documents from § 87(2)(b)'s hands and gives them to PO Mahuad, who places them on the hood of the patrol car. At 16:49:08, PO Mahuad and PO Cummings both move their hands around the outer layer of § 87(2)(b)'s left pants pocket. PO Cummings' BWC shows him at 16:49:10, reaching inside § 87(2)(b)'s left pants pocket, and telling § 87(2)(b) that he was handcuffed for failing to comply with lawful orders. At 16:49:15, PO Mahuad's BWC shows him opening § 87(2)(b)'s wallet and removing § 87(2)(b)'s driver's license. At 16:55:46, PO Mahuad enters the patrol car and runs § 87(2)(b)'s information. At 17:02:02, PO Cummings tells § 87(2)(b) that a supervisor is not necessary and that if § 87(2)(b) wants to speak to supervisor then the officers have no problem impounding his car and driving him to the stationhouse so he could speak to a supervisor. § 87(2)(b) replies, "that's not necessary." At 17:13:06, PO Mahuad exits the patrol car and together with PO Cummings remove § 87(2)(b)'s handcuffs. PO Mahuad then hands § 87(2)(b) his driver's license, vehicle documents, and a summons.

A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not. People v. Reid, 24 N.Y.3d 615 (2014) (BR08)

Evans v. Solomon, 681 F. Supp. 2d 233 (E.D.N.Y. 2010) (BR09) established that an officer is permitted to search individual's pocket for his identification once the officer established probable cause to arrest the individual for the traffic infraction, even in the absence of exigent circumstances or a subsequent arrest.

It is undisputed that § 87(2)(b) refused to provide his driver's license to PO Mahuad and PO Cummings despite their numerous orders, and that § 87(2)(b) only gave the officers

his TLC license, which was devoid of his date of birth and his picture. § 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR10).
- PO Mahuad has been a member-of-service for two years and has been a subject in four CCRB complaints and 15 allegations, six of which were substantiated, and two of which remains open.
 - Case #201708643 involved a substantiated allegation of an entry, threat of force, discourtesy, and frisk of a person against PO Mahuad. The Board recommended formalized training. The NYPD is yet to impose discipline.
 - § 87(2)(g)
- PO Cummings has been a member-of-service for four years and has been a subject in two CCRB complaints and three allegations, two of which remains open, and the other of which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On December 10, 2018, a Notice of Claim inquiry was sent to the NYC Office of the Comptroller, and the inquiry is still pending. The results will be added to the case file upon receipt (BR11).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date